L.MOHAPATRA, J & S.K.MISHRA, J.

O.J.C. NO.10553 OF 2000 (Decided on 22.04.2011)

RAGHUNATH MISHRA …….Petitioner.

.*Vrs.*

PRINCIPAL ACCOUNTANT GENERAL (A&E) & ORS. ……Opp.Parties.

(**B) LOKPAL & LOKAYUKTA ACT, 1995 (ACT NO.8 OF 1995) – S.8.**

(C) PROMOTION –

For Petitioner - Mr. K.C.Kanungo, G.S.Rath, P.K.Mishra, S.K.Mishra, P.K.Sahoo, B.B.Nayak, A.K.Mohapatra.

For Opp.Parties- Sri Saroj Kumar Das
Addl. Standing Counsel (Central) (for O.P.1)
Addl. Standing Counsel (for O.P.2)

S.K.MISHRA, J. The simple but interesting question which arises in this writ petition is whether conferring selection grade is a promotion or not. The petitioner assails decision of the Principal Accountant General (A & E), Orissa, Bhubaneswar in not granting him pension as per the last pay drawn by him in the selection grade to which he was appointed after the date of his superannuation during the period of his extension.

2. The facts of the case are undisputed. It may be summarized as follows:-

The petitioner was an IAS Officer. He retired on superannuation on 30.06.1996. At that time, he was posted as the Secretary to the Orissa Legislative Assembly. It is further borne out that the Government of Orissa because of urgency of public service extended his service for six months up to 31.12.1996 in the same post of Secretary, Orissa Legislative Assembly. During such extension, he was promoted to the selection grade time scale of pay and his pay was fixed accordingly in the selection grade.

While fixing his pension, the Principal of the Accountant General (A & E), Orissa, Bhubaneswar raised an objection, to the effect that, the promotion given to the petitioner during his extension of service after superannuation is not a regular one. The office of the opposite party no.1, therefore, sought a clarification from the Comptroller and Auditor General of India regarding this matter as it involved a promotion in view of the principles laid down under Para-VIII of Government of India, Department of Personnel and Administrative Reforms' O.M. No.260AA/1/77/EST-B dated 18.05.1978.

In the meanwhile, the Government of Orissa clarified that the promotion to selection grade does not involve any change of post on posting. It was further

contended that under the IAS Pay Rules, senior scale has been defined as senior time scale/Junior Administrative Grade and selection grade and that an officer who fulfills the eligibility criteria of 14 years can be appointed to the selection grade without any change of post. The State Government, therefore, asserted that since the petitioner was given promotion to the selection grade without any change in his post, the aforesaid clarification of the Department of Personnel and A.R. does not apply.

The Office of the Comptroller and Auditor General of India clarified that the guidelines provide that there shall be no promotion during the period of extension. Hence, the objection raised by the Audit regarding regularity of the promotion granted to Sri Raghunath Mishra, i.e. petitioner is valid.

On such backdrop, the petitioner approached the Lokpal. The learned Lokpal considering the matter held that his pension be calculated on the basis of the last pay drawn by the petitioner. Further. Such direction having not been followed by the opposite parties, the present writ application has been filed.

3. At the outset, this being an application filed by an erstwhile civil servant, a writ application in the High Court is not maintainable. Instead, he should have approached the Central Administrative Tribunal. However, at this juncture, after lapse of more than a decade, we do not propose to transfer the file to dispose of this matter on this technicality and propose to proceed with the merit of the case.

4. Secondly, it is noted that the Lokpal is appointed under the Orissa Lokpal and Lokayukta Act, 1995. Such an Act empowers the Lokpal to investigate the administrative decision taken on behalf of the State Government or certain local and public authorities of Government Orissa and after making necessary investigation, it is required to submit a report to the competent authority of the State of Orissa under Section -12 of the Act. Further, Section - 8 of the Act debars the Lokpal to conduct an investigation in respect of a complaint which has or had any remedy before any court or Tribunal. Thus, the direction given by Hon'ble Lokpal in this case is of no consequence.

5. Now the question remains whether granting of selection grade to the petitioner during his extension of service is to be treated a promotion or not. In this regard, having heard learned counsel for the petitioner and learned counsel for the opposite party no.1, i.e. Principal Accountant General (A & E), this Court finds that the Rule-3 of the Indian Administrative Service (Pay) Rules, 1954 provides for time scales of pay. Sub-rule (1) of the said Rule provides that the time scale of pay admissible to a member of the service and the dates with effect from which the time scales shall be deemed to have come into force shall be as under:

i. Junior Scale
ii. Senior Scale- (a) Time Scale (b) Selection Grade.

Sub-rule (2) of Rule-3 provides that a member of the service on appointment to the selection grade shall draw pay in that grade as indicated in the Schedule-I. It further provides that the pay of the member of service, who on the date of his promotion to the selection grade was drawing pay at the maximum ordinary scale of pay, shall be regulated in the manner provided there-under. Sub-rule-'2A' provides for appointment to selection grade and to post carrying pay above the time scale pay in the administrative service shall be made by selection grade on merit with due regard to the seniority. The said Rule further provides that no member of the service shall be eligible for

appointment to the selection grade unless he has entered the 14 years of service calculated from the year of allotment assigned to him under Rule-3 of the Indian Administrative Service (Seniority of Special Recruits) Regulations, 1960 as the case may be.

6. The learned counsel for the petitioner relied upon the reported case of ***Union of India and others Vs. Luithukla (Smt) and others,*** (1999) 9 Supreme Court Cases, 273 wherein the Hon'ble Supreme Court has held that the selection grade has been evolved for giving incentive to an employee so that he may not lose interest on account of stagnation. It is contended by learned counsel for the petitioner that granting of selection grade is not a promotion in view of the fact that it did not advance the service conditions, in as much as, he never leaves the post which has already occupied by him nor occupies any new post and the post held by him remains the same and he starts getting pay in the selection grade instead of a lower grade. There is no additional responsibility on the employee also.

The learned counsel for the opposite parties, on the other hand, relied upon the reported case of ***State of Rajasthan Vs. Fatch Chand Soni***, (1996) 1 SCC 562 and contended that promotion not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post.

7. This question has been decided by the Supreme Court in a number of cases. The Constitution Bench of Supreme Court in ***Lalit Mohan Deb and others Vs. Union of India***, AIR 1972 SC 996 explains the scope and concept of selection grade. The Hon'ble Supreme Court quoted the Central Pay Commission and reiterated the object of providing incentives to employees, who have no outlets or a very limited outlets for promotion to higher post. Recommendations have been made in a number of cases that certain percentage of post in the grade should carry 10% on higher scale of pay even though there would be no change in the duty. Following the terminology involved, the same has been described as selection grade post. It is well recognized that a promotion post is a higher post with a higher pay. Selection grade is a higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get chance of promotion on account of limited outlets of promotion should at least be placed in the selection grade to prevent stagnation on the maximum of the scale.

8. In ***Union of India and another Vs. S.S. Ranade***, 1995 (4) SCC 462, the Hon'ble Supreme Court has examined the same issue again and held that it would well depend upon a particular rule. In case element of selection is involved in granting of selection, it would amount to promotion in a higher post scale and it cannot be claimed as matter of right automatically. However, there may be cases where it may be claimed on the basis of seniority only. Thus, whether grant of selection grade is a promotion or not would depend upon a particular rule, Government order, etc. It may be a promotion depending upon the facts of the case.

9. In ***State of Rajasthan Vs Fatch Chand Soni***, (supra) the Hon'ble Supreme Court reconsidered the issue and observed that in the literal sense the word 'promotion' means advance to a higher position, grade or honour. So also 'promotion' means advancement or preferment in honour, dignity, rank. Promotion, thus, not only covers

advancement to higher position or rank but also implies advancement to higher grade. In service law also, the expression 'promotion' has been understood in the wider sense and it has been held that promotion can either be a higher pay scale or to a higher post.

10. Thus, it indicates that whenever the conferring of selection grade is a matter of routine on achieving certain years of service, then it is not a promotion but where there is an element of selection on certain qualifying service, then it has been held as a promotion. In this case, the Indian Administrative Service (Pay) Rules, 1954 is confusing, in the sense, that the sub-rule-2 of Rule-3 speaks of appointment to selection grade. However in the proviso, it has provided that the pay of member of service on the date of his promotion to the selection grade shall be regulated in a particular manner. Rule-'2A' further provides that a promotion to the selection grade and to post carrying pay above time scale of pay in the Indian Administrative Services shall be made by a selection on merit with due regard to the seniority. The Rule further provides that member must have completed 14 years of service calculated from the year of allotment assigned to him. Thus, there is an element of selection in the case where merit and seniority are taken into consideration. It is not a case of automatic conferring selection grade to an IAS officer on completion of 14 years of service.

11. Annexure-G of the counter affidavit reflects that on 18.09.1996, 12 officers were allowed officiating promotion to the selection grade in pursuance of rule 3(2A) of the IAS (Pay) Rules, 1954. Thus, it is clear that the State of Orissa is also treating the conferring of selection grade on the IAS as promotion. Though in their letter dated 17.03.1997, i.e. Annexure-B, the State of Orissa has clarified that the petitioner has been given appointment to the selection grade without any change of post and there is no statutory bar for allowing the petitioner to get the selection grade during the period of extension in service. It is not the case of the State of Orissa that selection grade is being conferred as a matter of routine to all IAS officers on completion of 14 years of service. In other words, the State of Orissa has not asserted that there is no element of selection on the basis of merit and seniority for granting such selection grade to the officer.

12. Thus, in the present set of rules, it is held that the conferring of selection grade to the petitioner is a promotion but it is violative of clause-VIII of All India Services (Death-cum-Retirement Benefits) Rules, 1958, which provides that no Government servant, who is on extension of service after the prescribed date of retirement should be promoted to another post during the period of extension of service. Thus, the petitioner is not entitled to be promoted to the selection grade and thus, he is not entitled to receive the pension on the basis of his last pay drawn on the promoted scale of pay in the selection grade.

Therefore, we find no merit in the writ petition and the same is accordingly dismissed.

Writ petition dismissed.